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10/590,257	08/22/2006	Stefan Clauss	3753	6037
7590 Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743			EXAMINER SAHLE, MAHDERE S	
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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/590,257
Filing Date: August 22, 2006
Appellant(s): CLAUSS ET AL.

Michael J. Striker
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 27, 2009 appealing from the Office action mailed October 08, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

A substantially correct copy of appealed claims 1-11 appears on pages 7-9 of the Appendix to the appellant's brief. The minor errors are as follows: claim 4 is improperly dependent upon claims 2 and 3, and claims 8 and 11 are incorrect as well. The amendment to claims filed 8/22/09 corrected for the improper multiple dependency and

it appears that the claims submitted in the claim appendix revert to claims the original claims and not the claims amended 8/22/09.

(8) Evidence Relied Upon

20070175054

MURRAY

08-2007

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Murray (USPG Pub No. 2007/0175054).

Regarding claim 1, Murray discloses an optical marking device having at least one light source (16) (see figure 1, paragraph 0023), and having means for generating a first optical projection line on a reference face (paragraph 0024), as well as means for generating a second optical projection line on the same reference face (paragraphs

0024, 0059), and the second optical projection line forms an angle of 90° with the first projection line (paragraph 0059), characterized in that means are present which generate a third projection line (paragraphs 0058-0059), and the third projection line assumes an angle of 45° to the first optical projection line and an angle of 45° to the second optical projection line (paragraphs 0058-0059).

Regarding claim 2, Murray discloses the first, second, and third projection lines define a plane (see figure 19, paragraph 0059).

Regarding claim 3, Murray discloses the third projection line is an optical projection line (paragraphs 0023, 0058-0059).

Regarding claim 4, Murray discloses that at least one projection line is fanned out perpendicular to the reference plane (paragraphs 0028, 0058-0061).

Regarding claim 5, Murray discloses that the three optical projection lines are generated by at least one light source (16) (paragraph 0059), and in particular by at least one linear laser (paragraphs 0024, 0039).

Regarding claim 6, Murray discloses that the three optical projection lines are generatable by means of a single light source (16), and in particular by means of a single laser signal (paragraph 0059).

Regarding claim 7, Murray discloses that the optical projection lines are generatable by means of at least one optical element (88) from the single light source (16) (paragraphs 0039, 0059).

Regarding claim 8, Murray discloses a tool device (10) having a device as defined by one of claims 1 through 7 (see figure 1, paragraph 0023).

Regarding claim 9, Murray discloses that the device is suspended in the manner of a pendulum laser in a housing (12) of the tool device (10) (paragraph 0045).

Regarding claim 10, Murray discloses that the device is calibratable relative to the housing (12) of the tool device (10) (paragraphs 0042-0043).

Regarding claim 11, Murray discloses that the emission from the optical projection lines is switchable out of the housing (12) of the tool device (10), and in particular is individually switchable (see figure 2, paragraphs 0038-0040, 0058-0059).

(10) Response to Argument

Appellant's arguments against the 102(e) rejection over Murray is that the claimed optical marking device supplies three simultaneously projected lines. However, it is noted that the limitation upon which applicant relies (*simultaneous* production of three projections) is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The limitation that appellant relies upon but does not claim (*simultaneous* production of three projections) is taught by Murray at paragraph 58, lines 1-4, wherein Murray teaches the projection of lines of light set at 45° without requiring simultaneous projection. In addition, paragraph 59, lines 4-21 of Murray further teaches the use of multiple light sources to project at least two simultaneous lines of light on a surface or a single light source to project at least two lines of light at predetermined or adjustable angles with respect to one another.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Mahidere Sahle

/Mahidere S Sahle/

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